WP(C) 5517/2005
BEFORE
HON'BLE MR. JUSTICE P.K.MUSAHARY
IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA:
MANIPUR: TRIPURA: MIZORAM AND ARUNACHAL PRADESH)

WP(C) NO. 5517/2005

SRI CHIRANJEEV BEZBARUAH
SON OF SRI GANESH CHANDRA BEZBARUAH
RESIDENT OF BHOGDOIMUKH
(NEEMATI ROAD) P.S. BHOGDOIMUKH,
P.O. JORHAT.

&. PETITIONER.

-Versus-

1. THE STATE OF ASSAM,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF EDUCATION,
ASSAM, DISPUR, GUWAHATI : 6.

2. THE DIRECTOR OF HIGHER
EDUCATION, KAHILIPARA,
GUWAHATI : 19.

3. J. B. COLLEGE, JORHAT,
REPRESENTED BY ITS PRINCIPAL.

&. RESPONDENT.

BEFORE
HON'BLE MR. JUSTICE P. K. MUSAHARY

For the Petitioner : Mr. D. Mazumdar
Mr. A. J. Sarma
Mr. Rupam Sarma

For the Respondents : Mr. M. Khataniar
Mr. D.C. Borah

Date of hearing & Judgment : 17.12.2007

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Mazumdar, learned counsel for the petitioner Also heard Mr. M. Khataniar, learned counsel for respondent No.1 and 2 and Mr. D.C. Borah, learned counsel appearing on behalf of respondent No. 3.

2. The petitioner has contended that an advertisement was issued on 22.12.2004 by the Governing Body of J.B. College, Jorhat for filling up certain posts including a sanctioned post of lecturer in Botany. The petitioner appeared in the interview and he stood first in the selection and the resolution of selection w

as forwarded to the Director of Secondary Education, Assam, the respondent No.2 as per Rule 18 of the Assam Non-Government College Management Rules 2001 by the Principal, J.B. College, Jorhat, vide letter No. JBC/Est/7/2005/75 dated 11.07.2005 (Annexure C). The approval of the respondent No.2, the Director for appointment of the petitioner was not accorded due to proposal already taken by the Government for withdrawal of sanctioned post of lecturer in Botany of JB College, Jorhat and the respondent Director by his letter dated 29.04.2005 requested the said college not to advertise the said post. The said direction was made by the respondent Director pursuant to Government order dated 16.02.2005 for the purpose of implementation of Clause 4 (C) of the Office Memorandum dated 17.07.04.

3. It is submitted by Mr. Majumdar, learned counsel for the petitioner that the aforesaid Government Office Memorandum, so far as clause 4(C) is concerned, has became redundant in view of the Judgment and Order dated 06.06.06, passed in WP(C) 7290/2005 and the Assam College Employees (Provincialisation) Act, 2005. Therefore there is no embargo on the process of appointment of the petitioner as lecturer in Botany Department in JB College, Jorhat.

4. Countering the submissions made by Mr. Majumdar, learned counsel for the respondent Nos. 1 and 2, Mr. Khataniar submits that appointment cannot be made by the Governing Body of the College in view of the omission on their part in obtaining prior approval from the Director for advertisement of the post. The learned counsel for the respondent Nos. 1 and 2 did not enclose any Government Order/circular requiring such approval that is required by the Governing Body for issuing advertisement. It has been submitted by Mr. Majumdar, learned counsel for the petitioner, that the process of recruitment does not contemplate obtaining prior approval for issuing advertisement under Section 6 of the Assam College Employees (Provincialisation) Act, 2005 and any circular or order of the Government cannot override the provision of the law and the respondent authorities cannot make any objection to that effect.

5. It is submitted by Mr. D.C. Borah, appearing for respondent No.3, that there is requirement of a lecturer in Botany Department in the J.B. College, Jorhat and infact that post has been lying vacant since 30.04.2003 with the retirement of Smti. Runu Boruah and infact the Governing Body of the college is pursuing the Government for immediate appointment for the academic interest of the students.

6. This Court while issuing notice on 03.08.2005, observed as follows:

In view of the fact that the Government policy for adjustment of teachers working in a non-sanctioned post in grants-in-aid colleges of Assam is based on the directions issued by this Court in WP(C) No. 7350/04 (Shri Rabin Sharma - vs. - State of Assam and others), it will not be appropriate to pass any restrain order, at this stage, against the respondents. It is, however, made clear that if any adjustment is made by the respondents against any vacant post for which the petitioner stands selected, the appointment of the incumbent in the said post shall be subject to, and be governed by, the outcome of this writ petition and this fact shall be made known to the person, who may be appointed, in terms of the said Government Policy, to the said post.

7. In my considered opinion, taking prior approval for issuing advertisement for filling up a sanctioned post of lecturer in the college is not a legal requirement as the same is not contemplated under the relevant rules and the respondent authorities cannot put any embargo on the process of recruitment, particularly when the process has already completed in so far as the penal has already been prepared and admitted the position that the selection was held and the petitioner topped in the said selection list. Another aspect we have to consider is the academic interest of the students who are suffering for long 4(four) years and therefore it is not considered appropriate/proper to keep the matter pending.

8. In view of the above, I am inclined to dispose of this petition with a direction to the respondent authorities to act upon the selection list already prepared by the Governing Body of the college within a period of 1(one) month from the date of submission of the certified copy of this order.

9. With the aforesaid direction this writ petition is accordingly disposed of.